IN THE HIGH COURT OF U TTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32 (2) (5))

Description of case

Writ petition
No. 777 of (M/S) 2003. Decided on 04.09.2003

Bijendra Kumar ……..Petitioner
Versus
Additional District Judge, Haridwar ……Respondents.

A.F.R. (APPROVED for reporting)

~~Not approved for reporting~~

Dated: 4.9.2003

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 777 of 2003

CIVIL SIDE

Bijendra Kumar .....petitioner

Versus

Additional District Judge, Haridwar &
Another ……Respondents

Hon'ble Rajesh Tandon J:

By the present writ petition the petitioner has challenged the order dated 26.7.2003 passed in revision no. 16 of 1998 as well as order dated 31.3.1998 passed by the additional district Judge, Roorkee.

The brief facts are that a suit was filed by the plaintiff respondent praying of the eviction of the petitioner on the ground that the defendant is tenant on a monthly rent of Rs. 600/- as well as 7.5% i.e. a sum of Rs. 45/- is payable towards the water tax. It was alleged by the plaintiff respondent that rest is due from 1.8.1991 to 1.1.1992. A notice was sent on 24.8.1992 through Advocate, which was duly served on 25.8.1992. The rent which was claimed by the plaintiff in paragraph 4 of the plaint was from 1.8.91 to 25.9.92 to the extent of Rs. 8, 300/- from 26.9.92 to 15.12.92 damages were claimed to the extent of Rs. 1600/- and towards the water tax a sum of Rs. 1597/- total Rs. 11,497.50 was claimed from the defendant petitioner.

The petitioner has filed written statement and has contested the case sating therein that no water tax was payable by the petitioner and further two suits i.e. Suit no. 17 of 1994 as well as Suit no. 18 of 1994 one by Rajendra Kumar and another by Surendra Kumar was not maintainable in respect of the same property. The liability to pay rent was also denied by the defendant to the extent of rs. 600/- per month. Further is paragraph 15, it was alleged that both the brothers have illegally claimed separate rent of Rs. 600/- per month.

During the pendency of the suit plaintiff respondent has filed an application under Order 15 rule 5 C.P.C. the said application was allowed and the defence of the petitioner was struck off vide order dated 25.10.1996. The revision against the said order was also dismissed. The petitioner preferred a writ petition being 9489 of 1998 which was dismissed on 20.3.1998. High Court of Allahabad while dismissing the writ petition ahs directed that he may be permitted to make compliance of Order 15 Rule 5 C.P.C. along with application for condonation of dely. Order passed by Hon'ble Mr. Justice J.C. Gupta is quoted below:

"Learned Counsel for the petitioner states that the applicant may be permitted now to make compliance of Order 15 Rule 5 C.P.C. along with an application for condonaiton of delay. For this no permission is required. If the applicant so chooses, he may make such a representation before the trial court and if such a representation is made, the same shall be decided in accordance with law. So far as the present writ petition is concerned, it has no force and is dismissed."

Application submitted by the petitioner was also rejected by the learned Judge. Petitioner has also not deposited rent @ Rs. 600/-per month even after the order was passed by Allahabad High Court on 20.3.1998. Order dated 30.3.90 passed by the additional Civil Judge

rejecting the application 10-C became and it was not challenged by the petitioner.

The trial Court thereafter vide order dated 31.3.1998 decreed the suit and granted decree for eviction. Aggrieved by the aforesaid decree the petitioner went in revision. The revisional court also confirmed and dismissed the revision on 26.2.2003. The present writ petition has been filed challenging both the orders.

Heard Sri B.D. Upadhyay for the petitioner and Sri S.N. Babukar for the respondent.

Admittedly demanded rent as mentioned in the plaint has not been deposited at any stage of proceedings. The revisional Court has pointed out that inspite of the order passed in writ petition No 9489 of 1998 petitioner has not paid any rent and as such application was rejected on 30.3.1998 and the said order was not challenged at any stage of proceedings. Both the courts below have come to the conclusion that the rate of rent was Rs. 600/- per month. The Judge Small Cause Court has recorded findings of fact that the petitioner was tenant at the rate of Rs. 600/- per month as will appear from counter foil of the receipt 55-C as well as receipt no. 31, 49, 60 and 65. Apart from the rent water tax was also agreed to be paid. Rent is due from 1.8.1991 and the water tax is due from 1.1.1990. Petitioner, therefore, has been held to be defaulter towards rent of more than four months.

Further no illegality has been found in the notice under section 106 of Transfer of Property Act.

The revisional Court has confirmed the findings of the Judge, Small Cause Court and has recorded a finding that from available receipt it is evident that the rent was Rs. 600/-per month. The revisional Court has also recorded a finding that the amongst both the brothers there was family partition and in pursuance of that partition

dispute premises came to the share of the plaintiff respondent and as such suits were rightly maintainable before the trial Court by both the brothers. There is nothing on the record that any payment towards the rent and damage at any stage of proceedings were made. Therefore, I find that there was clear default in payment of rent so as to pass a decree for eviction against the petitioner under section 20(2(a) of U.P. Act No. 13 of 1972.

Even it is assumed that Order 15 Rule 5 C.P.C. has to be dealt with along with the merits of the case even then since the petitioner has not complied the provisions of Order 15 Rule 5 C.P.C. at any stage of the proceedings towards the admitted rent, therefore, there is no option for the court below to decree the suit for arrears of rent and damages.

Sri B.D. Upahdya learned counsel for the petitioner has not challenged the findings of fact recorded by the Court below. However, petitioner has voluntarily offered to vacate the premises. This fact has been mentioned in paragraph 22 of the petition. The same is mentioned below:

"That the petitioner is ready to vacate the premises in dispute and he is also ready to pay entire rent up to date as such it is expedient in the interest of justice that the impugned orders passed by the courts below may be set aside and the trial court may be directed to decide the case on merit after taking into consideration the evidence of the petitioner."

Both the Courts below have rightly passed the decree for eviction. No interference can be made on the findings of the courts below. Both the courts have rightly held that the petitioner was defaulter.

In the case Madan Mohan and another vs. Krishan Kumar Sood (Supreme Court & Full Bench Rent cases, 1993 SC 133) it has been held as under:

"Surely the Rent Control Act, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood.

…….Whatever, protection Rent Acts give they do not give blanket protection for "non-payment of rent." This basic minimum has to be complied with by the tenants. Rent Acts do not contemplate that if one takes a house on rent, he can continue to enjoy the same without payment of rent."

The findings of default cannot be interfered under Article 226 of the Constitution of India, in view of the judgment of Apex court 2000 (3) SCC 190 Mohan Amba Prasad Agnihotri and others vs. Bhaskar Balwant Aher that the jurisdiction of the High Court is supervisory, not appellate and High court can only interfere with a lower court's finding of fact it it is perverse or there is no evidence to support.

Counsel for the petitioner has stated that he is ready to vacate the premises provided the landlord may not make demand towards the decreetal amount. Counsel for the landlord has agreed to waive the decreetal amount provided the petitioner is ready to handover possession to the landlord within a period of three months from today. Sri B.D. Upadhya has agreed to vacate the premises and has made a statement at the Bar.

The writ petition is dismissed subject to the observations that the decree for eviction shall not be executed before 31st December

2003. The waiver of decreetal amount is conditional if the petitioner hands over possession before 31st Decmeber 2003. In case petitioner fails to comply the order passed by this Court, the decree for eviction as well as for realization of decreetal amount shall be executed forthwith.

(Rajesh Tandon, J.)

4.09.2003
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